

INTRODUCED BY: DAN MCGINN

COMMITTEE: FINANCE

RESOLUTION C-2016-27

**RESOLUTION AUTHORIZING THE CITY OF EVANSVILLE, INDIANA
TO EXECUTE AND DELIVER A
FIRST SUPPLEMENTAL AND AMENDATORY LOAN AGREEMENT
IN CONNECTION WITH ITS
ECONOMIC DEVELOPMENT REVENUE NOTE, SERIES 2013
(UNIVERSITY OF EVANSVILLE PROJECT)
AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO**

WHEREAS, the City of Evansville, Indiana (the "City"), is authorized by IC 36-7-11.9 and 12 (collectively, the "Act") to issue revenue bonds for the financing and refinancing of economic development facilities, the funds from said revenue bonds to be used for the acquisition, construction, expansion, renovation and equipping of said economic development facilities (or the refinancing thereof), and said facilities to be either sold or leased to a company or directly owned by a company; and

WHEREAS, pursuant to Ordinance G-2013-5 adopted on April 22, 2013, the City approved its Economic Development Revenue Note, Series 2013 (University of Evansville Project) (the "Note"), which Note was then issued on May 1, 2013; and

WHEREAS, the terms and conditions of the Note were governed by a Loan Agreement dated as of April 15, 2013 (the "Original Loan Agreement") between the City and the University of Evansville (the "Borrower"), and by a Purchase Agreement dated as of April 15, 2013 (the "Original Purchase Agreement") between the City and Old National Bank (the "Purchaser"); and

WHEREAS, Section 7.1 of the Original Loan Agreement authorizes the City and the Borrower to supplement and amend the Original Loan Agreement from time to time as necessary

FILED

AUG 05 2016

Jana Windness
CITY CLERK

or desirable to effectuate the purposes or intent thereof, with the prior written approval of the Purchaser; and

WHEREAS, Sections 3.6, 3.20, 3.21, 3.22 and 3.23 of the Original Loan Agreement set forth certain financial covenants for the benefit of the Purchaser and the Borrower, and the Purchaser and the Borrower now desire to amend Sections 3.6, 3.20, 3.21, 3.22 and 3.23 of the Original Loan Agreement to reflect certain mutually agreed upon revisions to those financial covenants; and

WHEREAS, a form of First Supplemental and Amendatory Loan Agreement has been submitted to this City Council which sets forth the amendments to Sections 3.6, 3.20, 3.21, 3.22 and 3.23 of the Original Loan Agreement as described above, and which already has been executed by the Borrower and by the Purchaser (indicating their consent to and written approval of the amendment as required by Section 7.1 of the Original Loan Agreement); now, therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSVILLE, INDIANA THAT:

Section 1. The substantially final form of the First Supplemental and Amendatory Loan Agreement is hereby approved and shall be incorporated herein by reference and shall be inserted in the minutes of the City Council and kept on file by the Clerk.

Section 2. The Mayor and the Clerk are hereby authorized and directed to execute, attest, affix or imprint by any means the City seal to the First Supplemental and Amendatory Loan Agreement approved herein on behalf of the City and any other document which may be necessary or desirable to consummate the amendment of the Original Loan Agreement as described herein. The Mayor and the Clerk are hereby expressly authorized to approve any modifications or additions to the First Supplemental and Amendatory Loan Agreement which

take place after the date of this Resolution with the review and advice of the City Attorney; it being the express understanding of this City Council that said First Supplemental and Amendatory Loan Agreement is in substantially final form as of the date of this Resolution. The approval of any such modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon.

Section 3. The provisions of this Resolution and the First Supplemental and Amendatory Loan Agreement shall constitute a contract binding between the City of Evansville, Indiana, the Borrower and the Purchaser, and after the execution and delivery of the First Supplemental and Amendatory Loan Agreement this Resolution shall not be repealed or amended in any respect which would adversely affect the rights of the Purchaser so long as any portion of the Series 2013 Note remains outstanding, or the interest on any portion of the Series 2013 Note remains unpaid.

Section 4. The liability and obligation of the City Council of the City of Evansville, Indiana, and the City of Evansville, Indiana, including their officers and agents, shall be limited solely to good faith efforts to consummate the amendment as described herein and neither the City Council of the City of Evansville, Indiana, nor the City of Evansville, Indiana, or their officers or agents, shall incur any liability whatsoever if for any reason the proposed amendment is not consummated.

Section 5. This Resolution shall be in full force and effect from and after its passage and execution by the City Council and signing by the Mayor.

This Resolution is passed by the City Council of the City of Evansville, Indiana on the 22nd day of August, 2016.



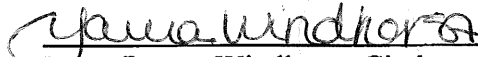
Missy Mosby, Presiding Officer

Attest:



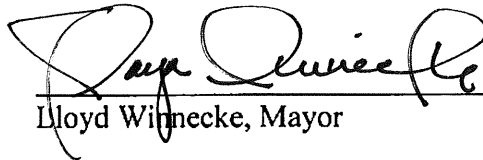
Laura Brown Windhorst, Clerk

This Resolution, having been passed by the City Council, is presented by me to the Mayor on the 25 day of August, 2016 at 10 (a.m.)p.m.



Laura Brown Windhorst, Clerk

This Resolution, having been passed by the City Council and presented to me, is approved by me and adopted on the 26th day of August, 2016.



Lloyd Winnecke, Mayor

FIRST SUPPLEMENTAL AND AMENDATORY LOAN AGREEMENT

BETWEEN

CITY OF EVANSVILLE, INDIANA

AND

UNIVERSITY OF EVANSVILLE

DATED AUGUST 23, 2016

FIRST SUPPLEMENTAL AND AMENDATORY LOAN AGREEMENT

This is a FIRST SUPPLEMENTAL AND AMENDATORY LOAN AGREEMENT, dated August 23, 2016 (the "First Supplemental Loan Agreement"), to a Loan Agreement dated as of April 15, 2013 (the "Original Loan Agreement", as supplemented and amended by this First Supplemental Loan Agreement, referred to collectively as the "Loan Agreement"), between the CITY OF EVANSVILLE, INDIANA, a municipal corporation duly organized and validly existing under the laws of the State of Indiana (the "Issuer"), and the UNIVERSITY OF EVANSVILLE, an Indiana nonprofit corporation (the "Borrower").

The written approval of Old National Bank (the "Purchaser") to this First Supplemental Loan Agreement, as required by Section 7.1 of the Original Loan Agreement, is evidenced by the execution and delivery of the consent attached hereto and made a part hereof.

The Issuer and the Borrower hereby covenant and agree as follows:

ARTICLE I.

DEFINITIONS

Section 1.01. Terms Defined. Except as otherwise specifically provided in this First Supplemental Loan Agreement, the words and phrases defined in the Original Loan Agreement and in the Purchase Agreement, dated as of April 15, 2013, between the Issuer and the Purchaser (the "Original Purchaser Agreement"), shall have the same meanings herein.

Section 1.02. Rules of Interpretation. For all purposes of this First Supplemental Loan Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) "First Supplemental Loan Agreement" means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions of the Loan Agreement.

(b) All references in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein", "hereof", "hereunder" and other words of similar import refer to this First Supplemental Loan Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles applicable to colleges and universities.

(e) Any terms not defined herein but defined in the Original Purchase Agreement shall have the same meaning herein.

(f) The terms defined elsewhere in the Original Loan Agreement shall have the meanings therein prescribed for them.

(End of Article I)

ARTICLE II.

AMENDMENT AND MISCELLANEOUS PROVISIONS

Section 2.01. Amendments. In accordance with Section 7.1 of the Original Loan Agreement, and effective immediately upon the execution and delivery hereof, the following provisions of the Original Loan Agreement are hereby amended as follows:

(a) Section 3.6 of the Original Loan Agreement is hereby amended by adding a new Section 3.6(d). Toward that end, (i) the word "and" shall be stricken from the end of Section 3.6(b); and (ii) the period at the end of Section 3.6(c) shall be replaced by the following text: "; and". A new Section 3.6(d) shall then be added with the following text:

"(d) as soon as available, but in no event more than 150 days after the last day of each Fiscal Year of the Borrower, beginning with the Fiscal Year ended May 31, 2016, a certificate of an Authorized Borrower Representative in the form of Exhibit A attached hereto, demonstrating compliance with the financial covenants set forth in Sections 3.20, 3.21 and 3.23 of this Loan Agreement."

(b) Section 3.20 of the Original Loan Agreement is hereby amended by striking the text thereof and substituting in lieu thereof the following text:

"Section 3.20. Unrestricted Debt Service Coverage Ratio. The Borrower covenants to maintain a ratio of Unrestricted Cash Flow from Operations, to Debt Service, at a level equal to or greater than 1.10 to 1.00, measured annually, beginning with the Fiscal Year ended on May 31, 2016. "Unrestricted Cash Flow from Operations" is defined as the sum total of the Borrower's unrestricted excess revenues over expenses, plus depreciation, plus amortization, plus interest expense, plus non-cash losses, and less non-cash gains that are included in unrestricted operating income or expenses. "Debt Service" is defined as the Borrower's debt service on long-term debt including capital lease payments, and excluding debt service payable primarily from pledges receivable, for the same Fiscal Year just ended. Notwithstanding the foregoing, for the Fiscal Years ending May 31, 2016 and May 31, 2017 unrestricted cash of up to \$1,000,000 may be added to the calculation of Unrestricted Cash Flow from Operations. Compliance with this covenant shall be reported annually by the Borrower as part of the certificate required by Section 3.6(c) of this Loan Agreement."

(c) Section 3.21 of the Original Loan Agreement is hereby amended by striking the text thereof and substituting in lieu thereof the following text:

"Section 3.21. Funded Debt. The Borrower covenants to maintain "bond funded debt" and "other debt not secured and payable from donations or pledges" equal to or less than 60% of the sum of unrestricted net assets and temporarily restricted net assets (adjusted for the removal of any interest rate swap contract) as reported on the Borrower's balance sheet, measured annually, beginning with the Fiscal Year ended on May 31, 2016. "Bond funded debt" for this purpose

shall consist of the outstanding principal amount of all bonds payable by the Borrower, including but not limited to the Series 2013 Note. "Other funded debt not secured and payable from pledges or donations" for this purpose shall consist of any outstanding loans where the primary source of repayment will not be donations that have been previously received or pledged, but will exclude amounts funded under any operating revolving lines of credit which include a provision requiring zero balance for no less than 30 consecutive days in any twelve month period. Compliance with this covenant shall be reported annually by the Borrower as part of the certificate required by Section 3.6(c) of this Loan Agreement. The Borrower will need to provide information on its compliance certificate regarding any loans that are secured and payable from donations or pledges in order to exclude such loans from the calculation of the ratio.

If, after the Fiscal Year ended May 31, 2016, there shall occur any change in GAAP from those used in the preparation of the financial statements referred to herein, including, without limitation, a re-characterization of operation leases to the effect that certain operating leases are to be treated as capital leases, either the Borrower or the Purchaser may by notice to the other party hereto, require the Borrower or the Purchaser negotiate in good faith to amend such covenants, standards, and terms so as equitably to reflect such change in accounting principles, with the desired result being that the criteria for evaluating the financial condition of the Borrower shall be the same as if such change had not been made."

(d) Section 3.22 of the Original Loan Agreement is hereby amended by deleting such provision; i.e., by striking the text thereof and substituting in lieu thereof the following text:

"Section 3.22. [Reserved]."

(e) Section 3.23 of the Original Loan Agreement is hereby amended by striking the words "One Million Dollars (\$1,000,000)" and substituting in lieu thereof the words "Three Million Dollars (\$3,000,000)".

Section 2.02. Ratification of Original Loan Agreement, as Amended. The Original Loan Agreement, as supplemented and amended by this First Supplemental Loan Agreement, is in all other respects hereby ratified and confirmed, and this First Supplemental Loan Agreement and all provisions contained herein shall be deemed a part of the Original Loan Agreement in the manner and to the extent herein and therein provided.

Section 2.03. Counterparts. This First Supplemental Loan Agreement is being executed in any number of counterparts, each of which is an original and all of which are identical. Each counterpart of this First Supplemental Loan Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

(End of Article II)

IN WITNESS WHEREOF, the Borrower and the Issuer have caused this First Supplemental Loan Agreement to be executed and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

UNIVERSITY OF EVANSVILLE

By: _____
Jeffery M. Wolf, Vice President for Fiscal
Affairs and Administration

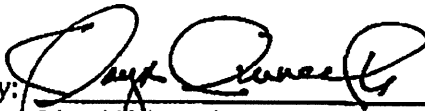
(Seal)

Attest:

By: _____
Rebecca L. Simpson, Assistant
Secretary of the Board of Trustees

*Signature Page to the First Supplemental and Amendatory Loan Agreement regarding the
City of Evansville, Indiana Economic Development Revenue Note, Series 2013
(University of Evansville Project)*

CITY OF EVANSVILLE, INDIANA

By: 
Lloyd Winnecke, Mayor

(Seal)

Attest:

By: 
Laura Brown Windhorst, Clerk

*Signature Page to the First Supplemental and Amendatory Loan Agreement regarding the
City of Evansville, Indiana Economic Development Revenue Note, Series 2013
(University of Evansville Project)*

CONSENT

By its signature below, the Purchaser consents to the amendments set forth in this First Supplemental and Amendatory Loan Agreement and provides its written approval as required by Section 7.1 of the Original Loan Agreement, all as of the date first written above.

OLD NATIONAL BANK, as Purchaser

By: _____
Jeff Bone, Vice President

*Signature Page to the First Supplemental and Amendatory Loan Agreement regarding the
City of Evansville, Indiana Economic Development Revenue Note, Series 2013
(University of Evansville Project)*

This instrument prepared by Todd W. Ponder, Ice Miller LLP, One American Square,
Suite 2900, Indianapolis, Indiana 46282-0200.

EXHIBIT A

COMPLIANCE CERTIFICATE

Covenant 1: Debt Service Covenant

Unrestricted Net Income	\$	-
+Depreciation	\$	-
+Amortization	\$	-
+Interest Expense	\$	-
+Unrealized Losses	\$	-
-Unrealized Gains	\$	-
+/- Other Non Cash Items	\$	-
Unrestricted Cash (b)	\$	1,000,000
Cash Flow from Operations	\$	-
Interest Expense	\$	-
Required Principal	\$	-
Total Debt Service	\$	-

Ratio Required	1.1
In compliance	Y/N

(b) In 2016 & 2017, Unrestricted Cash can be used in the covenant calculation.

Notes:

Covenant 2: Funded Debt Ratio

Bond Funded Debt	\$	-
Other Debt (a)	\$	-
Total Debt	\$	-
Unrestricted Net Assets	\$	-
Temporarily Restricted Net Assets	\$	-
Total	\$	-

Ratio Required	60%
In Compliance	Y/N

(a) Excludes Debt payable from donations and balance on lines of credit. See definition in documentation.

Notes:

Covenant 3: No additional Debt greater than \$3MM

In compliance	Y/N
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